

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:BRK:TL-N-8066-98
HNAdams

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Exempt By 5 U.S.C. § 552(b)(5)
From FOIA Disclosure

date: April 14, 2000

to: District Director, Brooklyn
Chief, Examination Division
Attn: Denis Bricker, Chief, Group 1108

from: District Counsel, Brooklyn

subject: [REDACTED]

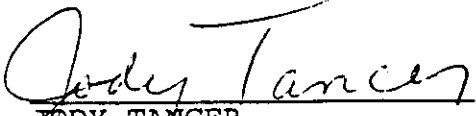
U.I.L. No. 7602.06-03

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Reference is made to our April 4, 2000 memorandum provided in response to your March 30, 2000 request for advice regarding the above taxpayer. We stated in the memorandum that it was being referred to the National Office for review, that the review might result in modifications to the advice rendered therein, and that we would inform you of the results of the review. The memorandum was reviewed by National Office subject matter specialists. The specialists agreed with the substance of the advice contained in the memorandum subject to the following two recommendations:

First, the National Office subject matter specialists recommended that the Service provide [REDACTED] with the [REDACTED] version of the L3164 pre-contact letter before conducting any interviews of third parties. Second, they recommended that you respond to the taxpayer's [REDACTED] letter with the letter attached hereto rather than the letter that was attached to our April 4, 2000 memorandum.

If we can be of further assistance, you should call Halvor Adams at (516) 688-1737.


JODY TANCER
Acting District Counsel

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ISSUE

Is the taxpayer entitled to attend interviews of third parties from whom the examination team intends to obtain testimony that is relevant to its determination of the taxpayer's correct tax liability, to have a stenographer transcribe the third party interviews, or to review in advance the questions that the examination team intends to ask at those interviews?

CONCLUSION

The taxpayer has no right to attend the examination team's interviews of third parties, to have a stenographer transcribe the third party interviews, or to review in advance the questions that the examination team intends to ask at those interviews.

DISCUSSION

The taxpayer, most recently in a letter dated [REDACTED], had asked the examination team to invite its representatives to be present at interviews of third parties that the examination team intends to conduct, to allow it to have a stenographer transcribe the interviews, or to review the interview questions in advance. We understand that the examination team does not want to grant the taxpayer's requests. We believe that it is within the examination team's discretion to deny the taxpayer's requests.

Code section 7602 allows the Service to obtain testimony from third parties who can provide information relevant to a taxpayer's tax liability. It has long been established that taxpayers have no right to be present during third party interviews or to have representatives at the interviews. United States v. Linton, 72-2 U.S.T.C. ¶ 9754 (E.D. Ky. 1972); United States v. Taylor, 79-1 U.S.T.C. ¶ 9231 (E.D. Va. 1979); United States v. Traynor, 611 F.2d 809, 811 (10th Cir. 1979).¹ We similarly have found no authority granting the taxpayer the right to review in advance questions to be asked of third parties. Such a requirement would in effect require the Service to provide taxpayers with advance notice of specific third parties that it intends to interview and the questions it intends to ask them. Congress recently enacted Code section 7602(c). That section requires the Service to give taxpayers advance notice of its intent to contact third parties, and after the fact notice of the specific third parties contacted, but does not grant taxpayers the right to advance notice of the specific third parties the Service intends to contact or the questions the Service intends to ask the third parties.²

¹ The third parties have not asked the Service to allow the taxpayer to attend the interviews. If they had requested the taxpayer's presence, then the third parties might have the right to have the taxpayer attend the interviews as long as the taxpayer does not participate in or interfere in any way with them. See United States v. Puckett, 573 F. Supp. 713, 714 (E.D. Tenn. 1982); United States v. Finch, 434 F. Supp. 1085 (D. Colo. 1977).

² We understand that the examination team has provided the taxpayer with the advance notice of intent to contact third parties required by Code section 7602(c).

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As you have requested, a draft response to the taxpayer's [REDACTED] letter is attached.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

If you have any questions, you should call Halvor Adams at (516) 688-1737.



JODY TANCER
Acting District Counsel

Attachment:
Draft response to taxpayer's letter

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